IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Customs Appeal No. 1 of 2007
Date of Decision: 20.4.2007

Commissioner of Central Excise, Ludhiana

…..Appellant

Versus

M/s Punjab Exports and Another

…..Respondents

CORAM : HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present : Mrs. Daya Chaudhary, Assistant Solicitor General of India for the appellant-Revenue.

JUDGEMENT

M.M. KUMAR, J.

This appeal filed under Section 130 of the Customs Act, 1962, challenging the order dated 26-5-2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi and it is claimed that the following substantial question of law would arise for our determination:

(i) "*Whether the onus, cast upon the party under the provisions of Section 123 of the Customs Act, 1962, to prove that the goods are not smuggled, can be held to have been discharged even when the documents submitted in support of their claim do not match or co-relate with the goods under seizure?*"

(ii) "*Whether in respect of the goods notified under Section 123 of the Customs Act, 1962 can be shifted on the department*?"

Brief facts of the case are that the assessee is a 100% Export-Oriented Unit and is engaged in the manufacturing of Polyester Grey Fabrics. On 27-3-2002, the officers of the Revenue searched the premises of the assessee. They discovered 100 bales of foreign made fabrics which were lying unaccounted in the compounded warehouse of the assessee. The Managing Director of the assessee concern disclosed that those goods in fact belonged to another concern i.e. M/s Fashion World International which was situated in the same building. Thereafter, a show cause notice was issued to the assessee for confiscation of the bales and for imposition of penalties.

The adjudicating authority after going through the evidence on record concluded that the bales in question were duly entered in the statutory record of M/s Fashion World International and dropped the proceedings. However, the matter traveled to the Tribunal and the Tribunal while reaffirming the finding of the adjudicating authority concluded as under :

> "*I find that the adjudicating authority after going through the evidence on record held that goods in question were duly entered in the statutory record or M/s Fashion World International, no doubt, Revenue has raised the issue that the goods in question are not co-relatable to the goods entered in the statutory record. But there is no evidence in support of this claim. The goods belonged to M/s. Fashion World International and M/s Fashion World International has not the party to these proceedings even no show cause notice was issued to M/s. Fashion World International without permission to another EOU so penal action could be against M/s. Fashion World International and M/s.*

Fashion World International has not party to these proceedings. Therefore, I find no merit in the appeal the appeal is dismissed."

A perusal of the aforementioned para of the order passed by the Tribunal shows that no evidence was produced to substantiate the issue that the goods discovered at the premises of the assessee were not co-relatable to the goods entered in the statutory record of M/s Fashion World International. The circumstances under which goods were kept in the premises of the assessee were duly explained. The goods belong to M/s Fashion World International, which was not even party to the proceedings nor any show cause notice was issued to the aforementioned firm. Therefore, we find that the appeal filed by the Revenue is without any substance and the same is liable to be dismissed as no question of law much a less a substantial question of law would arise.

Accordingly, the appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

April 20, 2007
Amit